



Board of Adjustment  
PO Box 120  
Town of Fremont, New Hampshire 03044  
Minutes of January 26, 2010  
Approved February 23, 2010

Members present: Chairman Doug Andrew, Vice-Chairman Scott Boisvert, Members John (Jack) Downing, Jack Baker and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:40 pm.

At the August 25, 2009 meeting Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. It was noted that the appointment remains in effect.

#### MINUTES

Mr. Downing made the motion to accept the minutes of the December 29, 2009 meeting as written. Motion seconded by Mr. Boisvert with unanimous favorable.

The continuation of case #09-002 – Emma Rankin; 522 Beede Hill Road, Map 6 Lot 001, was scheduled for 7:30 pm this evening. The Board waited until 7:45 pm, but when the applicant failed to appear the Board agreed to move on to the other Public Hearings scheduled and address this case following those Hearings.

Case # 010-001  
Concetta Leoncello  
Map 7 Lot 015  
70 Tibbetts Road

Present: Owner Concetta Leoncello, abutters Pauline Vaillancourt and Vincent Giannusa.

Mr. Andrew opened this Public Hearing at 7:45 p.m. and read the Public Notice of the Hearing as follows:

*In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday January 26, 2010 at the Fremont Town*

*Hall, downstairs Land Use meeting room, for Concetta M. Leoncello for 70 Tibbetts Road, Map 7 Lot 015, Fremont, NH.*

*The applicant is seeking Variances from the terms of Article IV Sections 1, 2, 3, 5, 6 & 8 as set forth in the Town of Fremont Zoning Ordinance to re-establish this pre-existing, non-conforming parcel as a buildable lot to permit rebuilding of a dwelling previously destroyed by flooding.*

*You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.*

Mr. Andrew explained the purpose of the Board and the procedure for a Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article IV Sections 1, 2, 3, 5, 6, & 8 of the Fremont Zoning Regulations.

**Section 1.** Any new structure or extension of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet. In the case of multiple family dwelling structures, the set back shall be increased by an additional five (5) feet per family dwelling unit. ie: (50 plus (5 multiplied by the number of family units)). And that any such structure shall be set back from the side and rear lot lines by at least thirty (30) feet except in the case of multiple family dwelling structures, this set back shall be increased by an additional ten (10) feet per family dwelling unit, ie: (thirty (30) plus ten (10) multiplied by the number of family units). **(See also Article IX Section F-4)**

**Section 2.** Every building lot shall have a minimum contiguous lot frontage on Federal, State and Town highways of two hundred (200) feet provided that where lots are located on exterior side of a curving street the minimum road frontage shall be no less than one hundred (100) contiguous feet, provided that the average width of the lot measured across its center shall be two hundred (200) feet. Building lots on which multiple family dwellings are located shall have an additional frontage of twenty (20) feet per family unit when less than five (5) family units and forty (40) feet per family unit when five (5) or more family units are considered. ie: (two hundred (200) plus twenty (20) multiplied by the number of family units) or (two hundred (200) plus forty (40) multiplied by the number of family units). No lot line shall be less than one hundred (100) feet and each lot shall have no less than four (4) lot lines.

**Section 3.** No lot shall be less than two (2) acres in area except that lots on which multiple family dwellings are located shall be increased by twelve thousand (12,000) square feet per family dwelling unit when less than five (5) units and by twenty thousand (20,000) square feet per family unit when five (5) or more family units, ie: two (2) Acres plus twelve thousand (12,000) multiplied by the number of family units or two (2) Acres plus twenty thousand (20,000) multiplied by the number of family units. No lot shall have more than one (1) occupied dwelling thereon. **(See also Article XI Sections E-1 and F)**

**Section 5.** The maximum percentage of each building lot which may be occupied by buildings, off street parking areas, driveways, septic systems and associated leaching fields shall be thirty (30%) percent.

**Section 6.** At least one (1) acre of contiguous land of every lot, laid out for residential use (after the adoption of this amendment) shall be buildable land with soils dry enough to permit for installation (and use of facilities for disposal) of sanitary waste(s) disposal facilities and shall not have slopes exceeding twenty percent (20%). Wetlands as described in this zoning ordinance are excluded as buildable land. To facilitate determination of the existence of sufficient buildable land, reference should be made to USDA soils maps where indications are given of soil types, ledge conditions, slopes, (Height of) water table, and permeability of soils or by individual lot testing (of area in question). **(See also Article IX Section F)**

**Section 8.** All sanitary disposal systems (septic tanks, Leach fields, etc.) shall have no portion within thirty (30) feet of any lot line, or within one hundred (100) feet of any wetland or water supply. **(See also Article IX Sections F-1- F-4 and Article XI E-6)**

It was noted that this hearing was noticed on January 14, 2010 at the Fremont Post Office and Fremont Town Hall and in the January 15, 2010 edition of the Manchester Union Leader. The

applicant and all abutters were notified via certified mail on January 15, 2010 and all returns have been received except for abutters Powers and Cummings. The application package included the application, several copies of the portion of the Tax Map that shows the subject parcel, proper check amount, a current list of abutters, letter of intent, and a December 29, 2009 Code Enforcement letter of referral.

Comment sheets were received from the following, with comments in italics:

Conservation Commission: *The Conservation Commission recommends that any new construction not go beyond the original footprint. The ZBA decision that is to be recorded at the RCRD shall state that all subsequent conveyances of the property shall include a reference to the recorded ZBA decision on the deeds.*

Health Officer: *Requires new septic approved by the State – also new well.*

Code Enforcement Officer: *The lot has a certified “as-built” on file in the property files specifically identifying the pre-existing structure foot print. This certified “as-built” would have been used to determine the buildable footprint upon re-building. An approved individual sewage disposal system must be provided.*

*Floodplain provisions of the ordinance apply and location is to be determined by the certified “as-built” upon proper elevation of the building to above the base flood elevation for this specific lot (to be determined by engineered plan). Filling of the land is prohibited by the Fremont Flood Plain Ordinance.*

*I do not propose or support further granting of variances greater than originally shown on the certified “as-built” as it relates to the maximum structure foot print and placement. This is consistent with all of the properties within the flood plain whose rebuilds were the result of the same flooding casualty loss. I believe the lots must remain single-family and be limited to pre-existing lot status of maximum of two bedrooms as to be limited by the septic system design. Without a specific and further variance request to the planned structure the limits as shown in the “certified as-built” footprint would apply.*

Planning Board: *No comment*

Mr. Andrew stated that on July 10, 2007 this property was granted a Variance from Article III Section 1-A of the Fremont Zoning Ordinance for an additional one year extension for the owner to rebuild the home that was destroyed by flooding. The time extension expired on June 8, 2008.

In her cover letter Mrs. Leoncello requested that the ZBA grant Variances to Article IV Sections 1, 2, 3, 5, 6 & 8 of the Zoning Ordinance which are necessary in order for her property at 70 Tibbetts Road (Map 7 Lot 015) to be sold as a buildable lot. She further explained that due to budget constraints and a bad economy she was unable to get a loan and rebuild within the time frame allotted by the previous Variances.

A site visit was discussed and Mr. Boisvert made the motion that because the Board had conducted a site visit relative to the 2007 Variance request, and this is a vacant lot with nothing on the property to view, a site visit is not necessary at this time.

Motion seconded by Mr. Baker with unanimous favorable vote.

With little more discussion Mr. Andrew read the five conditions of a Variance with Mrs. Leoncello's

written statements submitted with the application (answers in italics) and the Board's vote as follows collectively on Article IV Sections 1, 2, 3, 5, 6, & 8 of the Fremont Zoning Regulations.

1. Granting the variance would not be contrary to the public interest because: *The granting of the Variance will not be contrary to the public interest because approval will not threaten public safety, health or welfare. The granting of the Variance will not change, but will enhance the character of the area/neighborhood.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

2. The use is not contrary to the spirit of the ordinance because: *The granting of the Variance does not conflict with the Ordinance nor does it alter the character of the Ordinance. The requested use would be neither dangerous nor hazardous to abutters. The lot will remain limited to the pre-existing certified "as built" as it relates to the maximum structure foot print and placement. This will be consistent with all the properties that have been recently rebuilt due to flooding.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

3. Granting the Variance would do substantial justice because: *The approval of a Variance would allow this lot to be re-established as buildable. The approval of the Variance will not harm the general public or other individuals, but enhance and increase property values in the neighborhood.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

4. The proposed use would not diminish surrounding property values because: *The lot was a pre-existing home site in an area with many rebuilt/refurbished properties. The re-building of a home that was razed due to flooding will be aesthetically pleasing and enhance the value of surrounding properties.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.

Because of special conditions of the property that distinguish it from other properties in the area:

- a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of the provision to the property:

*This pre-existing non-conforming lot which is in a development of small home sites has a home on it for more than 40 years. The home had to be demolished due to flooding. If the existing non-conforming ordinance was applied it would not allow for a structure on this property to be rebuilt/reestablished. No reasonable development could occur if the lot was required to strictly meet any and all requirements under the present zoning.*

and

- b) The proposed use is a reasonable one.

*Property surrounding this area where flooding occurred have been restructured/rebuilt and are currently occupied. The rebuilding of a dwelling will not alter the character of the neighborhood as it will be limited to pre-existing certified "as built" status.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

Mr. Boisvert made the motion that, based on the information presented and as the result of the Boards vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant Variances to Concetta Leoncello to the terms of Article IV Sections 1, 2, 3, 5, 6 & 8, as set forth in the Town of Fremont Zoning Ordinance, to re-establish this pre-existing, non-conforming parcel at Map 7 Lot 015, 70 Tibbetts Road, Fremont, NH as a buildable lot to permit rebuilding of a dwelling previously destroyed by flooding, with the following conditions:

1. That the lot status remain as single-family and be limited to pre-existing lot status of maximum of two bedrooms as to be limited by the septic system design.
2. The "certified as-built" footing certification, as certified on June 15, 2006 by Blaisdell Survey, LLC, shall apply and any new structure must adhere to the limits as shown in said "certified as-built footing certification". No portion of any structure shall exceed these limits.
3. All subsequent conveyances of this property shall include a reference to this recorded decision on the deeds
3. NH RSA 676:17 shall apply.

Motion seconded by Mrs. Bolduc with unanimous favorable vote.

Mr. Andrew declared the Variances granted and explained to the applicant that there is a thirty (30) day appeal period. He also stated that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed. The applicant submitted payment for the recording fees.

Mr. Boisvert made the motion to close this Public Hearing at 8:15 p.m.  
Motion seconded by Mr. Downing with unanimous favorable vote.

Case # 010-002  
Pauline Vaillancourt and Vincent Giannusa  
Map 7 Lot 016  
74 Tibbetts Road

Present: Owners Pauline Vaillancourt and Vincent Giannusa, and abutter Concetta Leoncello.

Mr. Andrew opened this Public Hearing at 8:15 p.m. and read the Public Notice of the Hearing as follows:

*In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:45 pm on Tuesday January 26, 2010 at the Fremont Town Hall, downstairs Land Use meeting room, for Pauline Vaillancourt and Vincent Giannusa for 74 Tibbetts Road, Map 7 Lot 016, Fremont, NH.*

*The applicant is seeking Variances from the terms of Article IV Sections 1, 2, 3, 5, 6 & 8 as set forth in the Town of Fremont Zoning Ordinance to re-establish this pre-existing, non-conforming parcel as a buildable lot to permit rebuilding of a dwelling previously destroyed by flooding.*

*You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.*

Mr. Andrew explained the purpose of the Board and the procedure for a Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article IV Sections 1, 2, 3, 5, 6, & 8 of the Fremont Zoning Regulations.

**Section 1.** Any new structure or extension of existing structure intended for any use shall be set back from the street property line at least fifty (50) feet. In the case of multiple family dwelling structures, the set back shall be increased by an additional five (5) feet per family dwelling unit. ie: (50 plus (5 multiplied by the number of family units)). And that any such structure shall be set back from the side and rear lot lines by at least thirty (30) feet except in the case of multiple family dwelling structures, this set back shall be increased by an additional ten (10) feet per family dwelling unit, ie: (thirty (30) plus ten (10) multiplied by the number of family units). **(See also Article IX Section F-4)**

**Section 2.** Every building lot shall have a minimum contiguous lot frontage on Federal, State and Town highways of two hundred (200) feet provided that where lots are located on exterior side of a curving street the minimum road frontage shall be no less than one hundred (100) contiguous feet, provided that the average width of the lot measured across its center shall be two hundred (200) feet. Building lots on which multiple family dwellings are located shall have an additional frontage of twenty (20) feet per family unit when less than five (5) family units and forty (40) feet per family unit when five (5) or more family units are considered. ie: (two hundred (200) plus twenty (20) multiplied by the number of family units) or (two hundred (200) plus forty (40) multiplied by the number of family units). No lot line shall be less than one hundred (100) feet and each lot shall have no less than four (4) lot lines.

**Section 3.** No lot shall be less than two (2) acres in area except that lots on which multiple family dwellings are located shall be increased by twelve thousand (12,000) square feet per family dwelling unit when less than five (5) units and by twenty thousand (20,000) square feet per family unit when five (5) or more family units, ie: two (2) Acres plus twelve thousand (12,000) multiplied by the number of family units or two (2) Acres plus twenty thousand (20,000) multiplied by the number of family units. No lot shall have more than one (1) occupied dwelling thereon. **(See also Article XI Sections E-1 and F)**

**Section 5.** *The maximum percentage of each building lot which may be occupied by buildings, off street parking areas, driveways, septic systems and associated leaching fields shall be thirty (30%) percent.*

**Section 6.** *At least one (1) acre of contiguous land of every lot, laid out for residential use (after the adoption of this amendment) shall be buildable land with soils dry enough to permit for installation (and use of facilities for disposal) of sanitary waste(s) disposal facilities and shall not have slopes exceeding twenty percent (20%). Wetlands as described in this zoning ordinance are excluded as buildable land. To facilitate determination of the existence of sufficient buildable land, reference should be made to USDA soils maps where indications are given of soil types, ledge conditions, slopes, (Height of) water table, and permeability of soils or by individual lot testing (of area in question). (See also Article IX Section F)*

**Section 8.** *All sanitary disposal systems (septic tanks, Leach fields, etc.) shall have no portion within thirty (30) feet of any lot line, or within one hundred (100) feet of any wetland or water supply. (See also Article IX Sections F-1- F-4 and Article XI E-6)*

It was noted that this hearing was noticed on January 14, 2010 at the Fremont Post Office and Fremont Town Hall and in the January 15, 2010 edition of the Manchester Union Leader. The applicant and all abutters were notified via certified mail on January 15, 2010 and all returns have been received except for that of abutter Hiller. The application package included the application, several copies of the portion of the Tax Map that shows the subject parcel, proper check amount, a current list of abutters, letter of intent, and a December 29, 2009 Code Enforcement letter of referral.

Comment sheets were received from the following, with comments in italics:

Conservation Commission: *The Conservation Commission recommends that any new construction not go beyond the original footprint. The ZBA decision that is to be recorded at the RCRD shall state that all subsequent conveyances of the property shall include a reference to the recorded ZBA decision on the deeds.*

Health Officer: *Requires new septic approved by the State – also new well.*

Code Enforcement Officer: *The lot has a certified “as-built” on file in the property files specifically identifying the pre-existing structure foot print. This certified “as-built” would have been used to determine the buildable footprint upon re-building. An approved individual sewage disposal system must be provided.*

*Floodplain provisions of the ordinance apply and location is to be determined by the certified “as-built” upon proper elevation of the building to above the base flood elevation for this specific lot (to be determined by engineered plan). Filling of the land is prohibited by the Fremont Flood Plain Ordinance.*

*I do not propose or support further granting of variances greater than originally shown on the certified “as-built” as it relates to the maximum structure foot print and placement. This is consistent with all of the properties within the flood plain whose rebuilds were the result of the same flooding casualty loss. I believe the lots must remain single-family and be limited to pre-existing lot status of maximum of two bedrooms as to be limited by the septic system design. Without a specific and further variance request to the planned structure the limits as shown in the “certified as-built” footprint would apply.*

Planning Board: *No comment*

Mr. Andrew stated that on July 10, 2007 this property was granted a Variance from Article III Section 1-A of the Fremont Zoning Ordinance for an additional one year extension for the owner to rebuild the home that was destroyed by flooding. The time extension expired on June 8, 2008.

In their cover letter Mrs. Vaillancourt and Mr. Giannuso requested that the ZBA grant Variances to Article IV Sections 1, 2, 3, 5, 6 & 8 of the Zoning Ordinance which are necessary in order for their property at 74 Tibbetts Road (Map 7 Lot 016) to be sold as a buildable lot. They explained they had hoped to rebuild the home that had to be demolished due to extensive flood damage, but were unable to do so and find the need to sell. They added that in order to sell this lot as buildable they need to establish this land as such.

A site visit was discussed and Mr. Boisvert made the motion that because the Board had conducted a site visit relative to the 2007 Variance request, and this is a vacant lot with nothing on the property, a site visit is not necessary at this time.

Motion seconded by Mr. Baker with unanimous favorable vote.

With little more discussion Mr. Andrew read the five conditions of a Variance with Mrs. Vaillancourt and Mr. Giannuso written statements submitted with the application (answers in italics) and the Board's vote as follows collectively on Article IV Sections 1, 2, 3, 5, 6, & 8 of the Fremont Zoning Regulations.

1. Granting the variance would not be contrary to the public interest because: *The granting of the Variance will not be contrary to the public interest because approval will not threaten public safety, health or welfare. The granting of the Variance will not change, but will enhance the character of the area/neighborhood.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

2. The use is not contrary to the spirit of the ordinance because: *The granting of the Variance does not conflict with the Ordinance nor does it alter the character of the Ordinance. The requested use would be neither dangerous nor hazardous to abutters. The lot will remain limited to the pre-existing certified "as built" as it relates to the maximum structure foot print and placement. This will be consistent with all the properties that have been recently rebuilt due to flooding.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

3. Granting the Variance would do substantial justice because: *The approval of a Variance would allow this lot to be re-established as buildable. The approval of the Variance will not harm the*



*general public or other individuals, but enhance and increase property values in the neighborhood.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

4. The proposed use would not diminish surrounding property values because: *The lot was a pre-existing home site in an area with many rebuilt/refurbished properties. The re-building of a home that was razed due to flooding will be aesthetically pleasing and enhance the value of surrounding properties.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

5. Literal enforcement of the Ordinance would result in unnecessary hardship to the owner.

Because of special conditions of the property that distinguish it from other properties in the area:

- a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of the provision to the property:

*This pre-existing non-conforming lot which is in a development of small home sites has a home on it for more than 40 years. The home had to be demolished due to flooding. If the existing non-conforming ordinance was applied it would not allow for a structure on this property to be rebuilt/reestablished. No reasonable development could occur if the lot was required to strictly meet any and all requirements under the present zoning.*

**and**

- b) The proposed use is a reasonable one.

*Property surrounding this area where flooding occurred have been restructured/rebuilt and are currently occupied. The rebuilding of a dwelling will not alter the character of the neighborhood as it will be limited to pre-existing certified "as built" status.*

Board vote:

Mr. Downing Yes  
Mr. Andrew Yes  
Mr. Baker Yes  
Mr. Boisvert Yes  
Mrs. Bolduc Yes

Mr. Boisvert made the motion that, based on the information presented and as the result of the Boards vote on the five conditions of a Variance, the Fremont Zoning Board of Adjustment grant Variances to Pauling Giannusa-Vaillancourt and Vincent Giannuso to the terms of Article IV Sections 1, 2, 3, 5, 6 & 8, as set forth in the Town of Fremont Zoning Ordinance, to re-establish this pre-existing, non-conforming parcel at Map 7 Lot 016, 74 Tibbetts Road, Fremont, NH as a buildable lot to permit rebuilding of a dwelling previously destroyed by flooding, with the following conditions:

1. That the lot status remain as single-family and be limited to pre-existing lot status of maximum of two bedrooms as to be limited by the septic system design.
2. The “certified as-built” footing certification, as certified on June 15, 2006 by Blaisdell Survey, LLC, shall apply and any new structure must adhere to the limits as shown in said “certified as-built footing certification”. No portion of any structure shall exceed these limits.
3. All subsequent conveyances of this property shall include a reference to this recorded decision on the deeds
3. NH RSA 676:17 shall apply.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew declared the Variances granted and explained to the applicant that there is a thirty (30) day appeal period. He also stated that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed. The applicant submitted payment for the recording fees.

Mr. Boisvert made the motion to close this Public Hearing at 8:30 p.m.

Motion seconded by Mr. Baker with unanimous favorable vote.

#### Point of Order

At 8:30 pm Mr. Andrew announced that at this time he would step down as a Zoning Board of Adjustment member as he is an abutter in the next case. Vice-Chairman Mr. Boisvert stepped in as Chairman.

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Case # 09-002  
Rankin Family Trust  
Emma Rankin  
MAP 6 LOT 001

Present: The applicant was not present nor was there anyone present to represent her.

Mr. Boisvert opened this Public Hearing at 8:30 pm and stated that this is a continuation of the December 26, 2009 portion of this Public Hearing which was continued to 9:30 am on January 16, 2010 at 522 Beede Hill Road for the purpose of a site visit, and to January 26, 2010 at 7:30 pm at the Fremont Town Hall.

Mr. Boisvert re-read Article IX-H of the Fremont Zoning Ordinance as follows.

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- H. *Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.*
1. *Recreation, including golf courses, parks (but not an amusement park) boating, fishing, landings, picnic areas and any non-commercial open-air recreation use, provided there are adequate provision for disposal of waste products and for parking.*
  2. *Dredging, filling, drainage (in compliance with the RSA 149:8a) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.*
  3. *Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Rockingham County Soil Conservation Service District of the environment effects of such proposed use upon the wetland and watershed protection area in question.*

Mr. Boisvert stated that the notification of certified notice of this Hearing had not been received from abutter Guiffre prior to the first portion of this Public Hearing, but it has now been received.

Mr. Boisvert reiterated the Conservation Commissions written comments as per the comment sheet. *The Conservation Commission recommends that the Special Exception should not be granted for the following reasons:*

1. *No provision for it in Article IX Section H*
2. *To avoid legal conflict with State RSA's governing Prime Wetlands, that the ZBA contact the Wetlands Bureau for recommendations on how to proceed.*

Mrs. Bolduc reiterated from the December 29, 2009 portion of this Public Hearing that, as per direction at the December 16, 2009 Planning Board meeting, Eben Lewis of NH Department of Environmental Services (NH DES) was notified of the activity that had taken place within 100' Watershed Protection area of a wetland without a permit, in this case a Prime Wetland on this property. Mr. Lewis said that the Town permitting process through zoning, and the State permitting process through application for permits are two separate processes and there would be no legal conflict between the Town and the State as long as any Town approval is conditioned upon the favorable approval and granting a Major Project Standard Dredge and Fill permit by the New Hampshire Department of Environmental Services (DES).

The Board received and reviewed a January 14, 2010 Wetland Buffer Report from Michael Coumo, NH Certified Wetland and Soil Scientist with the Rockingham County Conservation District (RCCD), as required in Article IX Section H. The Board then received and reviewed a follow-up report that included the same information as the first report as well as additional information. This letter read as follows:

On 31 December 2009 I inspected the Wetland and Watershed Protection District at this site, a portion of which has been recently disturbed to within 10=-/feet of the wetland.

Ms. Rankin met me at the site and explained that a portion of the site was cleared of small trees, some fill added to level the ground and it was bulldozed level this fall. The purpose of this work is to expand the blueberry orchard and allow

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mowing between the rows of bushes. A silt fence was in place along the wetland/upland boundary. No portion of the wetland had been disturbed.

Clearing of trees and agriculture are allowed uses in the Watershed Protection Area buffer. The issue at hand is the addition of fill and “altering the surface configuration of the land”, which is only allowed as a special exception (section 9.H.2) if it is “essential to the productive use of the land” and “constructed as to minimize the detrimental impact of such uses upon the wetland and watershed protection areas.”

Determination of whether or not the use of the land within the 100 foot Watershed Protection Area to grow blueberries is “essential to the productive use of the land” in this situation is not possible without further clarification or guidelines. In particular, it is unclear if the “productive use of the land” is referring to (1) direct productive use of the land within the Watershed Protection Area, or (2) productive use land outside of the Watershed Protection Area on the remainder of the parcel. An example of (2) would be impacts associated with an access road, utilities, or an irrigation line.

If the first interpretation is accepted, it can be argued that agriculture is allowed within the Watershed Protection Area, that growing blueberries is a relatively low impact way to productively use the land within the Watershed Protection Area, and that minimal alteration of the surface configuration of the land is a reasonable request to allow for the productive use of the land within the Watershed Protection Area.

If the second interpretation is accepted, it can be argued that other parts of the parcel can be utilized productively without impacting the Watershed Protection Area. From this perspective, there is adequate land for growing blueberries outside the Watershed Protection Area, in which case there was no need to impact the Watershed Protection Area to provide for productive use of the parcel when considered as a whole.

Determining which interpretation is accepted in this case must be left up to the Town based on interpretations by the Zoning Board and previous precedents. This is not a decision that can be made solely on scientific criteria. If the second interpretation is accepted, then the impact to the Watershed Protection Area that has occurred was not necessary and there is no need to examine whether or not the work was done in such a manner as to “minimize any detrimental impact...upon the wetland and watershed protection areas.” The remainder of this report is provided in the case that the first interpretation is accepted.

Weed control around the blueberry bushes is essential to productivity and can most be reasonably accomplished with mechanical mowing; therefore, I would agree that the alteration of the surface configuration was needed to some degree to make the land smooth enough to mow. Since I did not see the site prior to the alteration, and there was a few inches of snow and ice on the ground when I inspected it, I cannot draw any other conclusions in this regard.

The location of the proposed blueberry bushes is next to those already existing. This will facilitate cross pollination between the different species. There are other areas on the property where bushes can be planted, but there are practical obstacles to them: some would require mature trees to be cleared and stumped, others would be partially shaded by existing structures on the property, others are of insufficient size. Much of the parcel is wetland or in the 100 foot Watershed Protection Area buffer.

Effort was made to minimize detrimental impact to the wetland by installation of a silt fence. Because there was snow and ice on the ground I could not tell if the disturbed area has been seeded and mulched. In order to assure that “detrimental impacts are minimized”, I recommend that a minimum 25 foot naturally vegetated buffer be allowed to reestablish between the cultivated land and the wetland and that any disturbed soils within the Watershed Protection Area are adequately seeded and mulched. In addition, only low phosphate, slow release nitrogen fertilizer or limestone, should be used within the Watershed Protection Area and no pesticides or herbicides of any kind should be utilized.

In summary, if it is interpreted that Article IX, H.2. refers to productive use of land anywhere on the parcel, then the proposed use would not be essential and this criteria would not be met. If it is interpreted that Article IX, H.2. refers to productive use of land within the Watershed Protection District, then this criteria would be met subject to the recommendations outlined above.

This correspondence was read its entirety into the minutes.  
(see file)

The Board also received and reviewed a copy of a January 22, 2010 correspondence from Conservation Commission Member Bill Knee to Mr. Coumo requesting a professional assessment and response to his concerns with the manner in which the reconfiguration of the land was accomplished. In this correspondence Mr. Knee said that he is particularly concerned because the wetland in question has been designated as a Prime Wetland. Mr. Knee stated his concerns relative to:

1. The materials used to reconfigure the land.
  - Brush from clearing the land was left on the ground and buried under truckloads of composted material.
  - Question of whether 25' buffer of natural vegetation would be sufficient protection to not have detrimental impact on the Prime Wetland.
2. No pesticides or herbicides of any kind should be utilized.
  - Questioned whether there is a way to legally bind a future landowner to this condition by deed or other legally transferable document.
3. The omission in the report that the wetland is a Prime Wetland.
4. The edge of wetland was not established.

(see file)

The Board also received and reviewed a January 25, 2010 correspondence from Leonard Lord, District Manager with RCCD offering supplemental information as a result of Mr. Knee's correspondence.  
(see file)

The Members agreed with Mr. Coumo that the installation of the silt fence helped to minimize detrimental impact to the wetland and in order to assure that further "detrimental impacts are minimized", a naturally vegetative buffer of at least twenty five (25) feet be reestablished between the cultivated land and the wetland and that any disturbed soils within the Watershed Protection Area are adequately seeded and mulched.

There was a discussion relative to pesticides and herbicides in the wetland and the Board collectively agreed no pesticides or herbicides of any kind should be utilized and that only low phosphate, slow release nitrogen fertilizer or limestone, should be used within the Watershed Protection Area.

Special Exception criteria was discussed. The three questions that must be answered to decide whether or not a special exception can be legally granted are:

1. Is the use one that is ordinarily prohibited in the district?
2. Is the use specifically allowed as a special exception under the terms of the ordinance?
3. Are the conditions specified in the ordinance for granting the exception met in this case?
  - Condition #1: Is the use essential to the productive use of the land?
  - Condition #2: Is the use located and constructed as to minimize any detrimental impact upon the wetland and watershed protection area?

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The Members agreed that they are not ready to answer the questions and need more time to determine whether the reference to productive use of land is that area within the Wetland and Watershed Protection District or the entire parcel of property.

Some possible conditions of approval were discussed. Mrs. Bolduc said that according to Mr. Lewis (DES) one of the conditions would need to be that the owner applies for a Major Project Standard Dredge and Fill application with the NH Department of Environmental Services and is successful in obtaining that permit. She said that another condition could be that no further or additional dredging, filling, drainage or altering the surface configuration of the land shall be allowed closer than one hundred (100') feet to any wetland on the property.

Mr. Lord's January 25, 2010 correspondence, in which he related that many towns tie local wetland impact approvals to first meeting State and Federal requirements, was discussed. He advised that the Town should be sure that the applicant is aware that she needs to get a NH DES Major Project Standard Dredge and Fill Approval for the work that has been completed. This prompted a conversation about the fact that the owner will be expected to file a Major Project Standard Dredge and Fill application with the NH DES whether or not a Special Exception is granted by the ZBA.

At 8:55 pm, after careful consideration by the Board, Mr. Boisvert made the motion to continue this Public Hearing to 7:30 pm on March 30, 2010 to allow additional time for; 1) the applicant to file for a Major Project Standard Dredge and Fill application with the NH Department of Environmental Services; and 2) for the Members to consider the Special Exception conditions as they pertain to this case.

Motion seconded by Mr. Baker with unanimous favorable vote.

Mrs. Rankin will be notified in writing of the motion.

### CORRESPONDENCE

There was no incoming correspondence.

There was a brief discussion relative to the upcoming deliberative session of the 2010 Town Meeting.

Next meeting: scheduled for February 23, 2010.

At 9:00 pm Mr. Baker made the motion to adjourn.

Motion seconded by Mr. Downing with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary

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